



DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20350 -1000

SECNAVINST 12792.4  
ASN(M&RA)/OCPM 31  
1 December 1989

SECNAV INSTRUCTION 12792.4

From: Secretary of the Navy

Subj: HUMAN IMMUNODEFICIENCY VIRUS AND ACQUIRED IMMUNE  
DEFICIENCY SYNDROME IN THE DEPARTMENT OF THE NAVY  
CIVILIAN WORKFORCE

Ref: (a) 29 U.S.C., Section 794 (Rehabilitation Act of 1973)  
(b) 29 CFR 1613, Subpart G  
(c) FPM Bulletin 792-42 of 24 Mar 88  
(d) DOD Instruction 1438.4 of 5 Dec 88 (NOTAL)  
(e) CPI 792-1  
(f) NAVMEDCOMINST 6260.3  
(g) 5 U.S.C., Section 552a (Privacy Act of 1974)  
(h) 5 CFR 297.502  
(i) SECNAVINST 5211.5C  
(j) CPI 339  
(k) 5 CFR 339  
(l) FPM 630  
(m) CPI 630  
(n) CPI 752

1. Purpose. To provide Department of the Navy policy and guidance concerning the Human Immunodeficiency Virus (HIV) and related illnesses in the civilian workforce.

2. Background

a. Since the Department of the Navy civilian workforce is large enough to represent a cross-section of the general population, it is reasonable to expect that as the incidence of HIV infection and Acquired Immune Deficiency Syndrome (AIDS) increases throughout the country, its impact on the Department's workforce will increase.

b. The term "AIDS" has been used broadly to cover a range of medical conditions which might be exhibited in a person infected with the HIV. Actually, a person with "classic AIDS" is in the final stage of a series of health problems caused by HIV. Some individuals infected with HIV develop less severe illnesses than AIDS, which are referred to as AIDS-Related Complex (ARC). While it has not yet been determined whether everyone infected with HIV will progress to the ARC or AIDS stage, many individuals infected with the virus remain in



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apparent good health for many years. However, any person infected with HIV can spread the virus, even though he or she may not be experiencing any health problems resulting from the infection.

3. Applicability. This instruction applies to all Department of the Navy appropriated fund civilian employees.

4. Policy

a. General. Employees who are infected with HIV or who have AIDS and/or related medical conditions will be treated with dignity and in the same manner as any individual with a serious or potentially life threatening condition. The paragraphs which follow provide specific policy and guidance for addressing the medical, psychological, and employment needs of such employees. Guidelines from the Public Health Service's Centers for Disease Control state that "the kind of nonsexual person-to-person contact that generally occurs among workers and clients or consumers in the workplace does not pose a risk for transmission of [HIV]." Therefore, HIV-infected employees will not be discriminated against and will be allowed to continue to work as long as they are able to maintain acceptable performance and do not pose a health or safety threat to themselves or others in the workplace. While such employees are entitled to the same benefits and considerations as any other employee who is ill, they are expected to meet the requirements of their jobs, subject to the consideration of reasonable accommodation that might be required due to protected handicapping conditions under references (a) and (b). It may be found in certain specialized contexts that an HIV-infected individual is not otherwise qualified for a position. These situations are very likely to involve individuals who have responsibility for health or safety. At the early stage of the disease, it is likely that neither health and safety nor performance will provide a justifiable reason for excluding an HIV-infected individual from a position. Moreover, current medical knowledge suggests that safety should not be a concern in most contexts even as the disease progresses. Reference (c) contains overall policy and guidance concerning AIDS for all federal agencies issued by the Office of Personnel Management (OPM).

b. Testing

(1) Reference (d) establishes policies and procedures for screening Department of Defense (DOD) civilian employees for HIV. Mandatory testing of civilian employees for HIV infection is generally prohibited in DOD. The only exception to this policy is when a host nation government imposes a

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requirement for testing as a condition for entry into the country. Even when such a requirement is imposed by a host country, a waiver of the testing prohibition must be obtained from DOD before any mandatory testing takes place. Requests for such waivers will be submitted through the chain of command to the Office of Civilian Personnel Management (OCPM) for submission to DOD.

(2) HIV screening, when required by a host nation government, shall be considered a requirement imposed by another country that must be met prior to a final decision to select the individual for a position or prior to approving temporary duty or detail to the host nation. Employees who refuse to cooperate with the screening requirement will be treated as outlined in the following paragraphs.

(a) If the employee is a volunteer and not subject to mandatory assignment, such as required by mobility programs, the offer will be withdrawn. The employee will be retained in his or her position without prejudice with respect to any benefits or career opportunities to which entitled under applicable law or regulation.

(b) Those who are obligated to accept permanent or temporary assignment to the host nation under the terms of a mobility agreement, regularly scheduled tour of duty, or other similar obligation, may be subjected to appropriate adverse action for their refusal to cooperate.

(c) Host nation screening requirements that apply to Department of the Navy employees presently located in the country must also be observed. Appropriate personnel actions will be taken to ensure compliance with screening requirements or in response to an employee's refusal to comply. The nature of the action will depend on the employee's job status, e.g., temporary duty or permanent assignment, the consequences of failure to comply with the requirement, and other relevant factors.

(3) Employees who accept the screening and are evaluated as HIV seropositive may be denied assignment on the basis that evidence of seronegativity is required by the host nation. Such employees shall be retained in their current positions without prejudice. Appropriate personnel actions may be taken with respect to Department of the Navy civilian employees who are evaluated as HIV seropositive while located in host nations when screening requirements are imposed. All employees who are evaluated as HIV seropositive shall be given appropriate counseling concerning their identified medical

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condition and shall retain all rights and benefits to which they are entitled including reasonable accommodation as provided in references (a), (b) and (c).

(4) A confirmatory test by Western blot must be accomplished on an individual if the initial screening test (ELISA) is positive. A civilian employee will not be considered as HIV antibody positive unless the confirmatory test is positive. Per reference (e), the Naval Medical Command (MEDCOM) will provide support to activities and commands in conducting these tests. If a MEDCOM facility is not in the local area, the required tests will be conducted by another medical laboratory at no expense to the individual.

(5) Voluntary testing, periodic retesting and recording of test results is authorized and should be offered to employees who, in the performance of their official duties, are exposed to blood or other body fluids of individuals possibly infected with HIV, following the provisions of reference (f).

c. Education

(1) Supervisors and managers. Concerns about AIDS and the transmission of HIV are best dealt with through the exchange of current information on this disease. At a minimum, information on the contents of this instruction, together with other appropriate guidance concerning HIV and AIDS issues in the workplace, should be provided through existing supervisory and managerial training programs on civilian personnel administration or through special programs developed specifically to address this issue. Educational efforts should be of a continuing nature.

(2) Non-supervisory employees. The incidence of HIV infection and AIDS in the community and the degree of concern expressed by the workforce should be considered in determining the need for and extent of general educational programs at each activity or command. Health care workers and others who could come into direct contact with blood and/or other body fluids of persons infected with the HIV must be provided appropriate equipment, training, and information to minimize the risk of such contact.

(3) Civilian Employee Assistance Program Personnel. Civilian Employee Assistance Program (CEAP) administrators and counselors will play a key role in counseling employees on AIDS-related issues. Sufficient training and information should be made available to these individuals to allow them to perform their counseling function.

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d. Confidentiality and Privacy. Reference (g) addresses disclosure of information from medical and other records maintained by an agency. The Privacy Act, as implemented in references (h) and (i), generally prohibits disclosure of information without prior written consent. Any information obtained from an employee, government health care facility, or private physician concerning those who have AIDS, ARC or are infected with HIV, including the results of any authorized tests conducted under the provisions of paragraph 5, must be held in strictest confidence except for official purposes authorized by the Privacy Act or other applicable laws.

5. Responsibilities

a. The Assistant Secretary of the Navy (Manpower and Reserve Affairs) has overall responsibility for policies associated with HIV and AIDS issues in the workplace.

b. The Director, Office of Civilian Personnel Management is responsible for developing Department of the Navy policy and issuing guidance concerning HIV and AIDS issues in the workplace.

c. The Assistant for Administration, Office of the Under Secretary of the Navy; the Chief of Naval Operations; the Commandant of the Marine Corps; and the Chief of Naval Research are responsible for ensuring the implementation of this instruction, including providing advice and guidance to their subordinate organizations.

d. Activity heads and commanders are responsible for implementing the provisions of this instruction within their activities and commands and ensuring that all subordinate managers and supervisors are familiar with the contents of this instruction.

6. Employee Counseling. Employees concerned about AIDS should communicate their concerns to their supervisors or other individuals who have been designated as contacts for AIDS issues. Supervisors may not be able to respond to all employee concerns but should be able to refer employees to sources of assistance, e.g., CEAP counselors. CEAP counselors must be familiar with facts about AIDS and community sources for counseling, testing, and treatment. Counseling may also be provided by medical personnel, occupational safety and health personnel, or others designated by the activity head or commander. Activity resources may be supplemented by community public and private health organizations which are involved with AIDS issues on a regular basis.

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7. Personnel Management Issues

a. Relationship to Personnel Actions. As with any other medical condition, information concerning AIDS, ARC, or HIV infection may not be used as a basis for an adverse or other personnel action where there is no relationship to job performance. Personnel actions, such as job restructuring or reassignment, might be appropriate in response to requests from HIV-infected employees or if employees become unable to perform their duties.

b. Ability to Work. An HIV-infected employee may develop a variety of medical conditions which raise concerns as to whether the employee can perform the duties of his or her position in a safe and reliable manner. Under references (j) and (k), it is primarily the employee's responsibility to produce documentation regarding the extent to which a medical condition is affecting his or her ability to perform required duties. However, if the employee does not provide sufficient documentation to allow management to make a decision concerning his or her capabilities, management may offer or, under limited circumstances covered in reference (j), order further medical examinations.

c. Leave. Requests for leave from employees with AIDS, ARC, or other related conditions will be handled per references (l) and (m), and should be given the same consideration as leave requests related to any other illness.

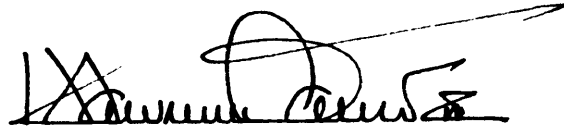
d. Retirement. HIV-infected employees may be eligible for disability retirement if their medical condition warrants and if they have the requisite years of Federal service to qualify. Activities should expedite the processing of disability retirement applications for employees suffering from AIDS or related conditions, as they would any applications where the employee's illness is at an advanced stage and is life threatening. OPM will consider applications for disability retirement from employees with AIDS or related conditions in the same manner as for other employees suffering from debilitating conditions, focusing on the extent of incapacitation and ability to perform assigned duties.

e. Employee Conduct. Situations may arise where employees express reluctance or actually refuse to work with someone who is infected with HIV, who has AIDS, or is perceived as having AIDS or related illnesses. While current information indicates there is no medical basis for such refusals, concerns of employees should be taken seriously. The best approach for preventing or responding to such situations is to educate employees on how HIV is spread, emphasizing the lack of danger

from normal, casual contact in the workplace. If employee concerns about co-workers result in requests for leave or reassignment, such requests should be handled in a normal manner, following applicable regulations and labor agreements. If an employee's unwarranted threat or refusal to work with an HIV-infected employee is impeding or disrupting the activity's work, it might become necessary to initiate appropriate disciplinary action against the offending employee following the procedures contained in reference (n).

f. Insurance. HIV-infected employees can continue their coverage under the Federal Employees Health Benefits Program and/or the Federal Employees' Group Life Insurance Program (FEGLI) in the same manner as other employees. The health benefits plans cannot exclude coverage for medically necessary health care services based on an individual's health status or a preexisting condition. Similarly, death benefits payable under the FEGLI Program are not cancelable solely because of an individual's current health status.

8. Action. Addressees will implement and adhere to the policies and procedures outlined in this instruction.

A handwritten signature in black ink, appearing to read 'H. Lawrence Garrett, III', with a long horizontal line extending from the end of the signature.

H. Lawrence Garrett, III  
Secretary of the Navy

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(See page 8)

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